

**MINUTES**  
**BOARD OF ADJUSTMENT**  
**PUBLIC HEARING**  
**MARCH 9, 2006**

The Lake County Board of Adjustment met Thursday, March 9, 2006 in the Commission Chambers on the second floor of the Round Administration Building in Tavares, Florida to consider requests for variances and any other petitions that may be submitted in accordance with Chapter XIV of the Lake County Land Development Regulations.

**Board Members Present:**

Howard (Bob) Fox, Jr.  
Darren Eslinger  
Henry Wolsmann, Vice Chairman  
Ruth Gray  
Mary Link Bennett  
Donald Schreiner, Chairman  
Carl Ludecke

**Staff Present:**

Terrie Diesbourg, Director, Customer Services Division  
Anita Greiner, Senior Planner, Customer Services Division  
Anna Ely, Public Hearing Coordinator, Customer Services Division  
Sherie Ross, Public Hearing Coordinator, Planning and Development Services Division  
Melanie Marsh, Deputy County Attorney

Chairman Schreiner called the meeting to order at 1:00 p.m. He noted for the record that there was a quorum present. He confirmed Proof of Publication for each case as shown on the monitor.

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**Minutes**

**MOTION by Mary Link Bennett, SECONDED by Henry Wolsmann to approve the February 9, 2006 Board of Adjustment Public Hearing minutes, as submitted.**

**FOR:** Fox, Eslinger, Wolsmann, Gray, Bennett, Schreiner, Ludecke

**AGAINST:** None

**MOTION CARRIED: 7-0**

Chairman Schreiner stated that all letters, petitions, photographs, and other materials presented at this meeting by applicants and those in support or opposition must be submitted to staff prior to proceeding to the next case. He explained the procedure for hearing cases on the consent agenda. He added that if a variance is approved at this public hearing, the owner/applicant should give staff at least 24 hours before proceeding to the zoning counter.

**CASE NO.: BOA#1-06-2 AGENDA NO.: 1**

**OWNERS: Jerry L. and Deborah S. Jacobs/  
APPLICANT: Nextel South Corporation**

Anita Greiner, Senior Planner, stated that a withdrawal has been requested for the above case.

**MOTION by Mary Link Bennett, SECONDED by Darren Eslinger to accept the withdrawal of BOA#1-06-2.**

**FOR: Fox, Eslinger, Wolsmann, Gray, Bennett, Schreiner, Ludecke**

**AGAINST: None**

**MOTION CARRIED: 7-0**

**CASE NO.: BOA#16-06-3**

**AGENDA NO.: 2**

**OWNERS: James A. and Marion Moore**  
**APPLICANT: Kris Burnham**

Anita Greiner, Senior Planner, stated that a 30-day continuance has been requested for the above case.

**MOTION by Mary Link Bennett, SECONDED by Darren Eslinger to continue BOA#16-06-3 until the April 13, 2006 Board of Adjustment public hearing.**

There was no one in the audience who had an objection to this continuance.

**FOR: Fox, Eslinger, Wolsmann, Gray, Bennett, Schreiner, Ludecke**

**AGAINST: None**

**MOTION CARRIED: 7-0**

**Discussion of Consent Agenda**

There was no one on the Board nor anyone in the audience who had an objection to the following cases remaining on the consent agenda: BOA#19-06-4, BOA#20-06-4, BOA#21-06-2, BOA#22-06-4, BOA#23-06-1, BOA#24-06-1, BOA#25-06-3, BOA#27-06-5, BOA#28-06-3, BOA#30-06-4, BOA#33-06-5, and BOA#34-06-1.

Ruth Gray asked that BOA#26-06-3 be removed from the consent agenda and placed on the regular agenda.

<b>CASE NO.:</b>	<b>BOA#19-06-4</b>	<b>AGENDA NO.:</b>	<b>4</b>
<b>OWNER/APPLICANT:</b>	<b>William R. Robertson</b>		
<b>CASE NO.:</b>	<b>BOA#20-06-4</b>	<b>AGENDA NO.:</b>	<b>5</b>
<b>OWNERS:</b>	<b>Frank E. and Jean F. Underhill</b>		
<b>APPLICANT:</b>	<b>Larry Beard</b>		
<b>CASE NO.:</b>	<b>BOA#21-06-2</b>	<b>AGENDA NO.:</b>	<b>6</b>
<b>OWNERS/APPLICANTS:</b>	<b>Carl R. Vollger, Marly M. Vollger, and Liza L. Vollger</b>		
<b>CASE NO.:</b>	<b>BOA#22-06-4</b>	<b>AGENDA NO.:</b>	<b>7</b>
<b>OWNERS:</b>	<b>Keith J. and Patricia B. Shamrock</b>		
<b>APPLICANT:</b>	<b>Steve Shamrock</b>		
<b>CASE NO.:</b>	<b>BOA#23-06-1</b>	<b>AGENDA NO.:</b>	<b>8</b>
<b>OWNERS/APPLICANTS:</b>	<b>Stanley R. Reynolds and Margaret A. Hill-Reynolds</b>		
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<b>OWNER/APPLICANT:</b>	<b>Terry W. Miller</b>		
<b>CASE NO.:</b>	<b>BOA#25-06-3</b>	<b>AGENDA NO.:</b>	<b>10</b>
<b>OWNERS/APPLICANTS:</b>	<b>Juan C. and Kaleen A. Torres</b>		
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<b>OWNERS:</b>	<b>Susan N. Chancellor and Ronald M. and Celita L. Zimmer</b>		
<b>APPLICANT:</b>	<b>Steven J. Richey, P.A.</b>		
<b>CASE NO.:</b>	<b>BOA#28-06-3</b>	<b>AGENDA NO.:</b>	<b>13</b>
<b>OWNERS:</b>	<b>Bonnie L. and Mark A. Todtenhagen</b>		
<b>APPLICANT:</b>	<b>Steven J. Richey, P.A.</b>		
<b>CASE NO.:</b>	<b>BOA#30-06-4</b>	<b>AGENDA NO.:</b>	<b>15</b>
<b>OWNERS:</b>	<b>John and Jacqueline Stitt</b>		
<b>APPLICANT:</b>	<b>Paul D. Caruso (Corban Construction Co.)</b>		
<b>CASE NO.:</b>	<b>BOA#33-06-5</b>	<b>AGENDA NO.:</b>	<b>18</b>
<b>OWNERS:</b>	<b>Casey and Isabel Collins</b>		
<b>APPLICANT:</b>	<b>Trinity Homes</b>		
<b>CASE NO.:</b>	<b>BOA#34-06-1</b>	<b>AGENDA NO.:</b>	<b>19</b>
<b>OWNERS:</b>	<b>James W. and Rose M. Leady</b>		
<b>APPLICANT:</b>	<b>Douglas P. Leady</b>		

**MOTION by Carl Ludecke, SECONDED by Ruth Gray to take the following actions on the above consent agenda:**

<b>BOA#19-06-4</b>	<b>Approval</b>
<b>BOA#20-06-4</b>	<b>Approval with conditions</b>
<b>BOA#21-06-2</b>	<b>Approval</b>
<b>BOA#22-06-4</b>	<b>Approval with conditions</b>
<b>BOA#23-06-1</b>	<b>Approval</b>

<b>BOA#24-06-1</b>	<b>Approval with conditions</b>
<b>BOA#25-06-3</b>	<b>Approval with one condition</b>
<b>BOA#27-06-5</b>	<b>Approval</b>
<b>BOA#28-06-3</b>	<b>Approval with conditions</b>
<b>BOA#30-06-4</b>	<b>Approval with conditions</b>
<b>BOA#33-06-5</b>	<b>Approval with conditions</b>
<b>BOA#34-06-1</b>	<b>Approval with conditions</b>

**FOR:** Fox, Eslinger, Wolsmann, Gray, Bennett, Schreiner, Ludecke

**AGAINST:** None

**MOTION CARRIED:** 7-0



CASE NO.:

BOA#18-06-2

AGENDA NO.:

3

OWNER/APPLICANT:

Khemraj Narain

Anita Greiner, Senior Planner, presented the case and staff recommendation of denial. She showed the aerial from the staff report on the monitor and submitted a zoning map as County Exhibit A.

Darren Eslinger declared a conflict of interest.

Carl Ludecke pointed out that the letter received from Opal Auton stated that there are one-acre tracts across CR 561. Ms. Greiner said they probably were approved prior to the Comprehensive Plan being adopted.

In response to Donald Schreiner, Melanie Marsh, Deputy County Attorney, said the applicant could apply for a Comprehensive Plan amendment. She questioned how successful that would be in this part of the Green Swamp Area of Critical State Concern. The applicant could also discuss with the Eslingers the possibility of the parties selling or buying the other portion so one party owns the entire five acres. The County recognizes the five-acre tract as one buildable lot.

Khemraj and Gurmattie Narain were present to represent the case. Regarding the principle of fairness, Ms. Narain said that if one person is given the opportunity to do the same thing as they are asking, she did not feel it was fair that they should be denied. When she asked how this Board could accommodate them, Mr. Schreiner explained that this Board does not have the authority to go against the Comprehensive Plan. Only the Board of County Commissioners (BCC) can do that. When the land was sold, Ms. Narain said a deed for this parcel was issued. She questioned why the sale was not stopped at that point. Mr. Schreiner said the County does not have the authority to stop the sale. That is a civil matter between the parties involved.

Ms. Narain questioned how Mr. Eslinger could have his parcel approved for a single-family home when he owned only part of the property. Ms. Greiner explained that when the existing single-family home was built, one person owned the whole five acres. A permit was issued for the entire five acres. That owner built the home and then sold off 2.5 acres to the west. Mr. Eslinger was not given approval to build the house. It already existed when he purchased the property. Mr. Eslinger added that he received a building permit for his barn. The building rights for the property were granted to the single-family dwelling unit, which belongs to him.

When Mr. Narain asked about the property across the street, Mr. Schreiner said they could only address the subject property. This Board has no information on other properties in the area. What they are allowed to do across the street may have been done before the Comprehensive Plan.

Ms. Marsh said a Special Master hearing is another option for this property.

**MOTION by Carl Ludecke, SECONDED by Mary Link Bennett to deny the variance request in BOA#18-06-2.**

FOR:

Fox, Wolsmann, Gray, Bennett, Schreiner, Ludecke

AGAINST:

None

CONFLICT OF

INTEREST:

Eslinger

MOTION CARRIED: 6-0

**CASE NO.: BOA#26-06-3****AGENDA NO.: 11****OWNERS: Susan Winter and Warfel Investments, Inc.****APPLICANT: Steven J. Richey, P.A.**

Anita Greiner, Senior Planner, presented the case and staff recommendation of approval. She showed the aerial from the staff report on the monitor and submitted a wetlands map as County Exhibit A and a flood zone map as County Exhibit B.

Ruth Gray said she was the member of the Board who asked that this case be pulled. Although it meets the criteria Ms. Greiner had listed in the staff report, she did not see any hardship or fairness issue. Ms. Greiner said it states in the staff report that the other lots in the subdivision are about the same size as the request. Most are developed as single lots. Ms. Gray said she could withdraw her objection as fairness has been proven.

Steve Richey was present to represent the case.

There was no one in the audience who wished to speak on the case.

**MOTION by Ruth Gray, SECONDED by Mary Link Bennett to approve the variance request in BOA#26-06-3.**

**FOR: Fox, Eslinger, Wolsmann, Gray, Bennett, Schreiner, Ludecke****AGAINST: None****MOTION CARRIED: 7-0**

CASE NO.: BOA#29-06-1

AGENDA NO.: 14

**OWNERS:** Wood and Deborah Brazill  
**APPLICANT:** Wood Brazill

Anita Greiner, Senior Planner, presented the case and staff recommendation of approval to allow the detached garage to be located in front of the existing dwelling unit, but denial of the requested variance to allow the detached garage to be located within the 100-year flood zone. She showed the aerial from the staff report on the monitor and submitted a map showing the flood plain line and wetland line (County Exhibit A) as well as the existing dwelling unit and garage.

Carl Ludecke spoke of bringing in appropriate fill to raise the property above the flood line. As discussed in the past, Ms. Greiner said Lake County must meet certain criteria and not grant variances to those criteria, in order to receive lower insurance rates. Each time the County allows a person to build in the flood zone when there is buildable area outside of the flood zone, that must be reported and is checked by FEMA on a regular basis. If the property was wholly in the flood zone, the County would issue a permit; but any structure must be built 18 inches above the flood plain line.

Wood Thomas Brazill was present to represent the case. He submitted a letter (Applicant Exhibit A) which explained why it would not be practical to place the garage so far from the existing house. When Ms. Greiner asked if a garage already existed near the single-family home, Mr. Brazill replied that half of the existing garage is a game room and the other half is a tool room. Ms. Greiner submitted a flood zone map as County Exhibit B.

In response to Ruth Gray, Melanie Marsh, Deputy County Attorney, stated that FEMA gives ratings to counties based on ordinances regarding building in the flood zone that each county has adopted. The insurance companies look at those ratings when they issue a homeowner's policy so the rating would affect everyone in a county. Granting variances to build in the flood zone could cause a change in the rating and create higher insurance rates for all Lake County citizens, not just to the person seeking a variance. Ms. Gray felt this Board was dealing with one very unique situation.

Darren Eslinger said it would be different if the applicant was attempting to build a dwelling unit and asking for a variance, but a house already exists.

Ms. Greiner informed Donald Schreiner that FEMA regulations are for dwelling units as well as additions.

In response to Henry Wolsmann, Mr. Brazill said his house exceeds 18 inches above the flood plain line. He does not carry flood insurance on the house anymore. He would be able to meet the other requirements for development within the 100-year flood plain such as compensating storage, surface flows, etc.

Mr. Thomas said that when he built his house six years ago, it was acceptable to build in the flood zone as long as it was built up 18 inches above the base flood elevation. However, the regulations have changed since that time.

**MOTION by Ruth Gray, SECONDED by Bob Fox to approve the two variance requests in BOA#29-06-1 with the following conditions:**

- 1. The detached garage must be constructed in the same architectural style as the dwelling unit and must use the same roofing material and color; the exterior of the detached garage must be of the same material and colors as the dwelling unit.**
- 2. The detached garage must be inspected by the Customer Services Division for compliance with the conditions as set forth by the Board of Adjustment. This inspection shall be required prior to a final inspection of the garage by the Lake County Building Division.**

**CASE NO.: BOA#29-06-1****AGENDA NO.: 14****OWNERS: Wood and Deborah Brazill****PAGE NO.: 2****APPLICANT: Wood Brazill**

Ms. Gray reiterated that she felt this was a unique situation and that this is exactly what the Board of Adjustment is charged to do. She questioned whether one unique situation would affect the County's rating.

Mr. Ludecke suggested an amendment to the motion to include language requiring the garage to be located approximately as shown on the site plan.

**AMENDMENT by Ruth Gray, SECONDED by Bob Fox to include language requiring the garage to be located approximately as shown on the site plan.**

Mr. Eslinger agreed that this is like a pre-existing issue. The hardship was created because the Code has changed. However, he is not willing to take the chance of penalizing all the citizens of Lake County if the insurance rating should change as a result of variances being granted.

Ms. Gray did not feel this Board was setting a precedent.

With this being a recent change to the Code, Mr. Eslinger felt there was the potential for future cases.

**FOR: Fox, Gray, Bennett, Ludecke**

**AGAINST: Eslinger, Wolsmann, Schreiner**

**MOTION CARRIED: 4-3**

CASE NO.: BOA#31-06-3

AGENDA NO.: 16

**OWNERS:** Concetta and Renato Ronco  
**APPLICANT:** Leslie Campione, P.A.

Anita Greiner, Senior Planner, presented the case and staff recommendation of denial. She showed the aerial from the staff report on the monitor and submitted it as County Exhibit A, pointing out the location of the boat dock. She said the boat dock was placed 50 feet from the adjacent property owner; the setback should be 100 feet.

Darren Eslinger said this appears to be a timing issue. Ms. Greiner agreed that if the owners had waited until the final plat and applied for a boat dock at that time, the zoning clearance would have been issued at 100 feet from the adjacent property line.

In response to Ruth Gray, Ms. Greiner said that when an application for a zoning clearance for a boat dock is submitted, it must include a property record card or a deed that shows the legal description of the property and a site plan of what is being placed on the property.

Ms. Greiner submitted a plot plan as County Exhibit B. Ms. Greiner explained that until this property becomes a final plat, the County considers it a 14-acre parcel. The plot plan submitted as County Exhibit B, a 14-acre parcel, was the plan submitted with the zoning clearance application. She submitted the preliminary plat for Porto Fino Bay as County Exhibit C, noting that this was the nine-lot subdivision they were proposing. If this plan had been submitted with the zoning clearance application, the County would have known the boat dock was a common boat dock for the nine-lot subdivision.

Ms. Gray felt the County was partially responsible for this situation.

Mary Link Bennett pointed out that it is better to have one dock for nine residential family units than to have nine docks.

Carl Ludecke was informed by Ms. Greiner that the boat dock has been built. Ms. Greiner said the setback requirement for a common dock is different than a residential dock. The building code requirements would be the same for either type of dock. A final inspection has been done for the dock. In response to Mr. Eslinger, Ms. Greiner said the building inspectors would look at the structural components of the boat dock, not the location of the dock or the number of slips. It is not uncommon to have more than one boat. It is a huge house on a big piece of property. As long as all requirements are met, the County could not tell a person that they could not have nine boats. Mr. Ludecke confirmed that the setback requirement for a common dock is 100 feet.

Leslie Campione was present to represent the case. She said she and the owners have met with the adjacent property owner, and that property owner has agreed not to oppose the current location of this dock provided no physical improvements are done to the property that includes the recreational area. The preliminary plat (Applicant Exhibit A) was approved in March of 2001. At the time, Ms. Ronco wanted to divide this property into three tracts for her and her husband and their two children. This plat showed the nine lots and the recreational area. The Roncos attended a Development Review Staff (DRS) meeting and discussed what was needed for the recreational area. They were told 100 feet of width was needed. If they didn't need to set aside 100 feet, they would not have done that. They could have gotten another lakefront lot instead of a recreational area or they could have located the recreational area internal to the subdivision; in that case, the only setback would have been a ten-foot setback on each side. When they applied for a dock permit, the property had not yet been platted yet so there was only one property record card. On the application, nine slips were shown. The dock is placed 50 feet from the property line, which is in the middle of the 100-foot recreational area. They used the survey of the entire property. They could have submitted the preliminary plat, but they were told a boundary survey was needed. The only boundary survey Ms. Ronco had at that time was the entire tract.

Ms. Campione submitted Section 10.04.02 of the Land Development Regulations (LDRs) on the monitor

**CASE NO.:** BOA#31-06-3 **AGENDA NO.:** 16

**OWNERS:** Concetta and Renato Ronco **PAGE NO.:** 2  
**APPLICANT:** Leslie Campione, P.A.

and submitted it as Applicant Exhibit B. She also submitted paperwork from the dock construction as Applicant Exhibit C. She said Section 10.04.02 was misinterpreted at the DRS meeting. She spoke of similar variances granted in the past. She referred to Section 10.04.02.D. regarding a setback of 25 feet for a common area on the border of the property if a platted subdivision already exists. She said they are asking for a variance because the dock was built relying on the information obtained at the DRS meetings and discussions with staff. The Roncos thought they were doing the right thing. She submitted a letter from St. Johns River Water Management District as Applicant Exhibit D. She said the dock costs approximately \$38,000 to build. To tear the dock down and rebuild it would be a very significant economic hardship.

In response to Mr. Ludecke, Ms. Campione said the dock permit was obtained in July of 2005. At that time, the preliminary plat had been submitted. A common dock was always planned. Mr. Ludecke said their engineer or dock person should have advised them that a 100-foot setback was needed for a common dock.

Mr. Eslinger was informed that the Roncos maintain the fence between the two properties. It is on their property.

Rick Joyce, adjacent property owner and attorney with Akerman Senterfitt, felt the denial from staff is the direct result of his opposition to the location of this dock from the beginning. Using County Exhibit A, he pointed out the location of his house, which he and his wife bought three years ago. He had checked the preliminary plat and was aware of a common area. At that time, there were no structures in that common area; through this past September and October, there was no dock. He said his house is fairly close to the water, and the newly constructed dock was an obstruction to their view. From a development standpoint, he said the Roncos have done an exquisite job with this subdivision. He endorsed what they are doing in providing lake usage to their entire subdivision and withdrew his opposition. He said he met with Jeff Richardson this past August as he felt this was a common dock for a common area. Mr. Richardson replied that this property is zoned R-1, and the County cannot do anything about the dock until they plat the property. Mr. Joyce felt the Roncos should be notified of the different requirements for a residential dock and a common dock. It was late September before a letter was sent to the Roncos. He did speak to the person who was building the dock when the dock was first being constructed. However, he did not speak directly to the Roncos about the dock. He reiterated that he and his wife support this dock as long as there are no other structures built. The Roncos have agreed that there would be no other additions.

Mr. Eslinger was concerned that the boat dock would become a gathering place. He asked if Mr. Joyce was accepting of the potential noise problem. Mr. Joyce said a boat cannot be permanently docked on Little Lake Harris due to the high winds so he felt it would work out.

In response to Henry Wolsmann, Ms. Campione said the road will be privately maintained when it is platted and will not be open to the public.

Bennett Walling with Walling Engineering said that when they began this development, there was a concept of possibly having a dock in the future. They went to the County several times to discuss the layout of this project. They asked the setback requirement for a dock. They were given information that led them to believe that the 100-foot lot they had was adequate. He was never given any information that made him think the lot was not big enough for a dock. The next time he heard about a dock was when he received an e-mail from the County in September or October. The dock was not shown on the plans because at the time, he did not know if one was definitely being considered. When a dock is put on the plat as part of the construction plans, the subdivision cannot be platted until the dock is done.

**MOTION by Ruth Gray, SECONDED by Darren Eslinger to approve the variance request in**

CASE NO.: BOA#31-06-3 AGENDA NO.: 16

OWNERS: Concetta and Renato Ronco  
APPLICANT: Leslie Campione, P.A. PAGE NO.: 3

BOA#31-06-3.

**AMENDMENT by Darren Eslinger, SECONDED by Ruth Gray to add the following conditions to the original motion in BOA#31-06-3.**

1. There shall be no further variances granted for other accessory buildings in the recreational area.
2. The six-foot high fence shall be maintained by the applicant to where it exists now.
3. The visual and noise vegetative buffer, which is required to be ten feet, shall be increased to twenty feet.
4. There shall be no more structures built on the dock.

When Ms. Greiner asked for a clarification on the landscaping condition, Mr. Eslinger said the buffer would extend from the lake's edge to the front edge of the neighbor's house. Ms. Campione asked if a bench could be placed on the dock. Mr. Ludecke was agreeable to that.

**Ms. Gray restated the conditions to read:**

1. There shall be no more accessory buildings in the recreational area or on the dock.
2. The fence shall be maintained by the homeowners' association.
3. The vegetative buffer shall be 20 feet wide from water's edge to the front edge of the neighboring home.

Ms. Greiner asked that it be specifically stated as to what is allowed on the dock. Mr. Eslinger said he would want nothing additional on the dock that would require a permit. When Mr. Ludecke said he would not have an objection to a railing on the dock if it is no higher than three feet or a bench no longer than three feet. Mr. Eslinger asked if the railing or bench would require a permit. Ms. Greiner said a railing may require a permit. Mr. Ludecke suggested nothing on the dock over three feet high. Ms. Greiner confirmed that the Board wanted to add a condition to include language that would allow a seating area and a railing that is three feet or less.

Mr. Wolsmann was informed by Ms. Campione that the fence is about 484 feet long. Mr. Eslinger confirmed that the fence is six feet high.

**Ms. Gray withdrew her motion, and Mr. Eslinger withdrew his second.**

**MOTION by Ruth Gray, SECONDED by Darren Eslinger to approve the variance request in BOA#31-06-3 with the following conditions:**

1. There shall be no further accessory structures constructed or permitted within the recreational area or on the dock.
2. The homeowners' association shall maintain the existing privacy fence for its full length.
3. The first 20 feet from the water shall be buffered with a 20-foot wide vegetation area. The remaining area shall be buffered with a ten-foot vegetation area.

**CASE NO.: BOA#31-06-3**

**AGENDA NO.: 16**

**OWNERS: Concetta and Renato Ronco**

**PAGE NO.: 4**

**APPLICANT: Leslie Campione, P.A.**

- 4. Benches and/or a railing not to exceed three feet high shall be permitted on the dock.**

**FOR: Fox, Eslinger, Wolsmann, Gray, Bennett, Schreiner, Ludecke**

**AGAINST: None**

**MOTION CARRIED: 7-0**



CASE NO.:

BOA#32-06-1

AGENDA NO.:

17

OWNERS/APPLICANTS:

Gary and Adreinne Evans

Anita Greiner, Senior Planner, presented the case and staff recommendation of denial. She showed the aerial from the staff report on the monitor and submitted it as County Exhibit A. She also submitted a flood zone map as County Exhibit B and a wetlands map as County Exhibit C. She reiterated that the property is wholly within the wetlands and wholly within the flood zone, and the request does not meet the three minimum criteria as stated in the Comprehensive Plan. She submitted nine pictures as County Exhibit D.

Donald Schreiner confirmed that the only access to one of the properties is by boat.

Gary Evans was present to represent the case. He said in May of 2005, he and his wife purchased these 25 acres. At that time, he did not know anything about a lot of record, but he was told that there were four acres of high and dry land within these 25 acres. He referred to a Lake County property appraiser sheet, which indicates high and dry land. There are other parcels on the island that have some high and dry lands.

In response to Carl Ludecke, Mr. Evans said he lives to the right of the subject property. He said he had gone to the zoning counter several times and gotten three different solutions for this property. Then he received a letter from the County with a fourth solution. He filed for a variance but questioned why his application and money were accepted if this Board cannot approve the variance.

Mr. Ludecke suggested that Mr. Evans have the property surveyed to determine if the maps are correct as far as wetlands and flood plain.

Ms. Greiner explained that staff cannot tell someone that they cannot file for a variance. Someone from the Customer Services Division did call Mr. Evans and told him that his request did not meet the Comprehensive Plan and that the Board of Adjustment does not have the authority to grant a variance to the Comprehensive Plan. Mr. Evans said he wanted to go forward with it so she wrote the staff report and did all the work on the case. Then he called about a week ago and asked for a refund if he withdrew the case. Ms. Greiner said a refund could not be given as all the work had been done. Mr. Evans said he had been told by staff at the zoning counter that a variance was a possibility.

**MOTION by Ruth Gray, SECONDED by Bob Fox to deny the variance request in BOA#32-06-1.**

FOR:

Fox, Eslinger, Wolsmann, Gray, Bennett, Schreiner, Ludecke

AGAINST:

None

MOTION CARRIED: 7-0

**Discussion:****Douglas Laman**

Douglas Laman with Exclusive Homes said that several months ago he came before this Board to request some aggregation relief in Venetian Village. At that time, he had proposed duplexes. There was considerable opposition to the duplexes. He had talked to Ms. Greiner about the possibility of coming back and making another request for relief from aggregation to build single-family homes. He had been informed by Ms. Greiner that he may not be able to do that for a year unless there is a substantial change. He thought that going from duplexes to single-family homes would be a substantial change. Ms. Greiner gave the indication that she thought this Board may not be willing to hear another request from him for relief from aggregation. He asked for direction. Ms. Greiner said the Code states that an applicant must wait a year regardless of whether there is a substantial change.

Melanie Marsh, Deputy County Attorney, said that is correct. The res judicata provisions of the Code require that once a variance is denied, the applicant must wait at least one year from the date of denial and then there has to be a substantial change. He asked if there was a board to which he could appeal to get a variance from that one-year period. Ms. Marsh explained that res judicata is a legal principal to prevent people from coming back consistently to the boards. It is not something this Board could give a variance to, and this Board is the only board that gives variances.

Darren Eslinger asked if a Special Master hearing could handle that. Ms. Marsh said Mr. Laman could take the whole issue to a Special Master hearing. Information on filing an application for that procedure can be obtained at the zoning counter.

**Discussion:****Variances Inconsistent with the Comprehensive Plan**

Regarding variances that are inconsistent with the Comprehensive Plan, Darren Eslinger asked if there was a better way to inform applicants of this Board's lack of authority in such cases. Anita Greiner, Senior Planner, said the applicants are told about the inconsistency and are shown the letter from Department of Community Affairs (DCA) at the zoning counter. Sometimes, however, the applicants choose to go forward with the request.

Donald Schreiner suggested adding some language to the application about this. Melanie Marsh, Deputy County Attorney, said it could be put on the application; but until staff reviews the application, it is not known whether it is inconsistent.

**Discussion:****Setting Precedent**

Darren Eslinger questioned whether this Board is setting a precedent when granting certain variances. If a person is granted a variance and a neighbor with similar circumstances comes before this Board at a later time, principles of fairness would be violated if another variance is not granted. Don Schreiner pointed out that each case is heard on its own individual merits.

**Adjournment**

There being no further business, the meeting was adjourned at 3:35 p.m.

Respectfully submitted,

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Sherie Ross  
Public Hearing Coordinator

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Donald Schreiner  
Chairman